

## **REMARKS**

Reconsideration and withdrawal of the rejections of the application are respectfully requested in view of the above amendments and following remarks.

### **I. STATUS OF THE CLAIMS AND FORMAL MATTERS**

Claims 1, 2, 5-7, 11-14, 18, 22 and 23 are currently pending. Claims 1, 6, 11 and 22 are hereby amended. No new matter has been added by this amendment. Support for the amendment to claim 1 can be found at paragraphs 5-6, 33, 77, and Figures 4 and 5 of the application as originally filed. Support for the amendment to claim 6 can be found at paragraphs 41 and 91 and Figures 1 and 2 of the application as originally filed.

It is submitted that the claims, herewith and as originally presented, are patentably distinct over the prior art cited in the Office Action, and that these claims were in full compliance with the requirements of 35 U.S.C. § 112. The amendments of the claims, as presented herein, are not made for purposes of patentability within the meaning of 35 U.S.C. §§§§ 101, 102, 103 or 112. Rather, these amendments and additions are made simply for clarification and to round out the scope of protection to which Applicants are entitled.

### **II. THE REJECTIONS UNDER 35 U.S.C. § 112**

Claims 11 and 22 were rejected under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which Applicant regards as the invention. Claims 11 and 22 have been amended to obviate the Examiner's rejections.

### III. THE REJECTIONS UNDER 35 U.S.C. § 103(a)

Claims 1-2, 5-7, 11-14, 18, and 22-23 were rejected under 35 U.S.C. §103(a) as allegedly unpatentable over U.S. Patent No. 6,805,127 to Karasic (“Karasic”) in view of U.S. Patent No. 6,755,191 to Bertoch et al (“Bertoch”).

As recited in independent claim 1, the instant invention is directed to *inter alia*:

“A medical tube retaining device, said device including...

**a medical tube guide means for holding a medical tube located in an airway of the patient,** the medical tube guide means being supportable on one or both of the patient engaging portions and located relative to the patient engaging portions such that in use **the medical tube guide means is operatively positioned at the mouth of a patient in order to hold the medical tube as it exits the airway of the patient;**

wherein the medical tube guide means includes securing means operable between a securing and a releasing position, said securing means being configured to secure the medical tube against longitudinal displacement unless the securing means is in the releasing position in which case the medical tube is longitudinally displaceable into and out of the mouth of the patient, and

**wherein the medical tube guiding means include at least one bite block extending from at least one of the patient engagement means for preventing a patient exerting a compressive force on the medical tube.**

Applicant submits that nothing has been found in Karasic or Bertoch, taken alone or in combination that would teach or suggest the above-identified features of claim 1. Specifically Applicant submits that Karasic and Bertoch, taken alone or in combination, fail to teach or suggest “**a medical tube guide means for holding a medical tube located in an airway of the patient**” where the “**medical tube guide means is operatively positioned at the mouth of the patient in order to hold the medical tube as it exits the airway of the patient.**”

The Office Action cites a tongue retractor holder (62) discussed Karasic as disclosing “a medical tube guide means which is capable of holding a medical tube and is located in airway of the patient....the medical tube guide means is operatively positioned at the mouth of the patient in order to hold the medical tube as it exits the airway of the patient.” However, the tongue retractor as cited in Karasic completely fails to teach or suggest the feature as suggested in the Office Action. Karasic at column 4, lines 15 to 21 states that the “tongue retractor holder is preferably mounted to the mouthguard engaging bottom tooth engaging a tongue a tongue retractor for **suppressing tongue movement**. The tongue retractor holder can be a rectangular shaped arch, or it can be a U-shaped arch for **slidably engaging the tongue depressor**.” (Emphasis added). Thus, the device disclosed in Karasic is used to keep the mouth of a patient open and the tongue suppressed, which *then* allows for the introduction of a medical tube. The medical tube is not mechanically linked to, and is not retained by the device in any way or manner.

Thus, nothing in Karasic teaches or suggests that the tongue retractor holder functions as a medical tube guide means. Rather the tongue retractor’s function as described in Karasic is expressly directed towards tongue suppression of a patient. There is no support in either Karasic to suggest that the tongue redactor holder “**is operatively positioned at the mouth of the patient in order to hold the medical tube as it exits the airway of the patient**” as claimed in the present invention.

Further, Karasic further fails to teach or suggest wherein the **medical tube guiding means include at least one bite block extending from at least one of the patient engagement means for preventing a patient exerting a compressive force on the medical tube**. While Bertoch does disclose a bite block, the bite block is only used in so far with configuration of

Bertoch that discloses the use a bite block of a shield (10) that is positioned on the exterior of a patient's mouth. Therefore, the bite block of Bertoch is positioned and configured in a different manner than the bite block as recited in the claimed invention.

Therefore, Karasic and Bertoch, taken alone or in combination, fail to teach or suggest all the features of claim 1 nor do other rationales for the combination of Karasic and Bertoch apply to render the applicants' claimed invention to be obvious, e.g. (1) the combined teachings of Karasic and Bertoch do not lead one of ordinary skill in the art to the expectation of predictable results whether it is to achieve the effects achieved by the applicants' claimed device or to maintain or improve the aspects of the devices referred to by Karasic or Bertoch; (2) one of ordinary skill in the art had available to them virtually an infinite number of ways the products of either Karasic or Bertoc could have been modified, it is only after seeing the applicants' claimed device that in hindsight, the specific modification to either Karasic or Bertoc could have been envisioned; (3) there was no suggestion from Karasic or Bertoch (or from knowledge generally available to those of skill in the art) that special market forces or restrictions on design would have led one of ordinary skill in the art to the applicants' medical tube retaining device.

Therefore, for at least the foregoing reasons, Applicant submits that independent claim 1 is patentable.

For reasons similar to those described above, claim 22 is also believed to be patentable.

#### **IV. DEPENDENT CLAIMS**

The other claims are dependent from independent claim 1 or 22, discussed above, and are therefore believed patentable for at least the same reasons. Since each dependent claim is also

deemed to define an additional aspect of the invention, however, the individual reconsideration of the patentability of each on its own merits is respectfully requested.

Claim 6 recites “A medical tube retaining device as claimed in claim 5, wherein the **medical tube guide means is eccentrically located towards a commissure of the mouth.**”

Regarding claim 6, the Office Action states that the Karasic discloses the tongue retractor, as being located at the bottom side of the working gap. Claim 6 by contrast, recites that the medical tube retaining device is positioned towards the commissure of the mouth. Therefore Karasic merely discloses that the tongue retractor is positioned in the center of a horizontal axis of the working gap due to the central position of the tongue in the mouth of the patient. In contrast, the medical tube guide means as recited in claim 6, is located laterally towards a commissure of the mouth (the joint section where the top and bottom lips meet). Figures 1 and 2 are examples showing the claimed medical tube guide means laterally displaced.

### CONCLUSION


In view of the foregoing, it is believed that all of the claims in this application are patentable over the prior art, and an early and favorable consideration thereof is solicited. Because Applicant maintains that all claims are allowable for at least the reasons presented hereinabove, in the interests of brevity, this response does not comment on each and every comment made by the Examiner in the Office Action. This should not be taken as acquiescence of the substance of those comments, and Applicant reserves the right to address such comments

Statements appearing above with respect to the disclosures in the cited references represent the present opinions of the Applicants' undersigned attorney and, in the event that the Examiner disagrees with any such opinions, it is respectfully requested that the Examiner specifically indicate those portions of the respective reference providing the basis for a contrary view.

Please charge any fees incurred by reason of this response and not paid herewith to Deposit Account No. 50-0320.

Respectfully submitted,  
FROMMER LAWRENCE & HAUG LLP

By:

  
Ronald R. Santucci  
Reg. No. 28,988  
(212) 588-0800